

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Wallace

Confirmation No. 8099

Serial No.: 10/085,396

Group Art Unit: 2121

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Examiner: Hartman, Jr., Ronald D.

For: BULK INVENTORY NETWORK SYSTEM (BINS)

APPEAL BRIEF

Pursuant to 37 C.F.R. § 41.37, Applicant hereby submits this appeal brief in support of appeal from the decision of the Primary Examiner in the Final Office Action dated March 21, 2006 and the Advisory Action dated June 2, 2006 finally rejecting claims 17, 19, and 20.

The appeal brief is being timely submitted under 37 C.F.R. § 41.37(a) as the Notice of Appeal was filed on July 20, 2006, and a Petition for Extension of Time under 37 C.F.R. § 1.136(a) requesting a 1-month extension and providing authorization to charge the corresponding fee was filed on September 20, 2006.

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I. Real Party in Interest

The real party in interest is J.P. Donmoyer, Inc., present owner of the application and the invention described therein.

II. Related Appeals and Interferences

A judicial proceeding involving related patents is currently pending. J.P. DONMOYER, v. BUILDING MATERIALS CORPORATION OF AMERICA d/b/a GAF MATERIALS CORP and D.M. BOWMAN, INC., Case No. 2:06-cv-2269, in the United States District Court for the District of New Jersey, involves allegations of infringement of U.S. Patent No. 6,366,829 (“‘829 Patent”), entitled “Bulk Inventory Network System,” and United States Patent No. 7,092,897 (“‘897 Patent”), entitled “Bulk Inventory Network System.”

Application Serial No. 11/003,253, which issued as the ‘897 Patent, is a divisional of the application that is the subject of this appeal, i.e., Application Serial No. 10/085,396 (“‘396 Application”). The ‘396 Application is itself a continuation-in-part application of Application Serial No. 09/167,379, which issued as the ‘829 Patent.

The above-identified litigation is on-going and no decisions have yet been issued by the Court. Consequently, there are no decisions to include in the Related Materials Appendix attached hereto.

III. Status of Claims

Claims 17, 19, and 20 are pending in the present application. Claims 1-16, 18, and 21 have been canceled. Claims 17, 19, and 20 stand rejected, and their rejection is hereby appealed.

IV. Status of Amendments

After the Examiner's final rejection of claims 17-20 in an Official Action dated March 21, 2006, Applicant filed an Amendment After Final Rejection on May 19, 2006. In the May 19, 2006 Amendment, Applicant canceled claim 18 to place the case in better form for the present appeal. As indicated in the Advisory Action dated June 2, 2006, the Examiner has acknowledged the cancellation of claim 18 and maintained the rejection of claims 17, 19, and 20. (Official Action of June 3, 2006 at 4.)

V. Summary of Claimed Subject Matter

Applicant's invention relates to the field of automated inventory management and, in particular, concerns a bulk inventory network system (BINS) wherein storage levels for dry bulk goods can be remotely monitored and an entity, such as a transportation carrier, can be directed to replenish depleted raw materials based on, among other things, a history of usage and projected usage rates. Some exemplary embodiments of the invention are shown in Figs. 1-8. Features of the network are described at, for example, paragraphs [00012] – [00025] and [00031] – [00049] of the specification. (Patent Application filed Feb. 28, 2004 at 4-7 & 8-16.)

Independent claim 17 is directed to a method for a transportation carrier to maintain sufficient quantities of dry bulk materials at a remote manufacturing site. The method includes the steps of generating a first signal representative of an existing dry bulk material quantity at a remote site; transmitting a second signal corresponding to the first signal, from the remote site to a local computer or a central computer at predetermined time intervals; determining the existing dry bulk material quantity and projected material usage rate for the existing dry bulk material

quantity based on the transmitted signals; automatically ordering additional dry bulk materials from a preselected vendor by at least one of a local computer and a central computer based on the existing material quantity and the projected material usage rate; automatically directing a transport vehicle to deliver the additional dry bulk material from the preselected vendor to the manufacturing site; and transporting the additional dry bulk material from the preselected vendor to the manufacturing site, whereby additional dry bulk material is supplied to the manufacturing site before the existing dry bulk material is depleted.

With reference to Figures 1-8, the Specification discloses certain exemplary structures in some embodiments of systems capable of implementing the claimed method. For example, in some embodiments, a level detector 20 is capable of generating the first signal representative of an existing dry bulk material quantity and transmitting the first signal to a remote telemetry unit (RTU) 16. *See* Specification ¶ [00032]. RTU 16 is capable of transmitting the second signal corresponding to the first signal to a remote inventory monitoring system 10, which comprises a central computer 12. *Id.* Software means installed and running on the central computer 12 are capable of receiving and storing data transmitted from RTU 16 and are capable of determining the existing dry bulk material quantity and projected material usage rate for the existing dry bulk material quantity. *Id.* Specific and alternative means and structures embodying the aforementioned features of the claimed method are disclosed in the Specification. *Id.* ¶¶ [00033] – [00040], [00042] – [00049]. When raw material levels fall below a predetermined level, software means on central computer 12 are capable of automatically ordering additional dry bulk materials from a preselected vendor based on the determined existing material quantity and projected material usage rate and automatically directing a transport vehicle to deliver the

additional dry bulk material from the preselected vendor to the manufacturing site. *Id.* ¶¶ [00040] – [00041]. The transportation carrier then transports the additional dry bulk material from the vendor to the manufacturing site, and the dry bulk material is supplied before the existing dry bulk material is depleted. *Id.*

Independent claim 19 is directed to a method for a transportation carrier to maintain sufficient quantities of dry bulk materials at a remote manufacturing site. The method includes the steps of generating a first signal representative of an existing dry bulk material quantity at a remote site; transmitting a second signal corresponding to the first signal, from the remote site to a local computer or a central computer at predetermined time intervals; determining the existing dry bulk material quantity and projected material usage rate for the existing dry bulk material quantity based on the transmitted signals; automatically ordering additional dry bulk materials from a preselected vendor by at least one of a local computer and a central computer based on the existing material quantity and the projected material usage rate; automatically directing a transport vehicle to deliver the additional dry bulk material from the preselected vendor to the manufacturing site; transporting the additional dry bulk material from the preselected vendor to the manufacturing site, whereby additional dry bulk material is supplied to the manufacturing site before the existing dry bulk material is depleted; and producing at least one of an audible alarm and a visual alarm, via the central computer, if the material level falls below a predetermined level.

Independent claim 19 includes all the steps of independent claim 17, with the additional step of producing at least one of an audible and a visual alarm, via said central computer, if said material level falls below a predetermined level. The disclosures in the Specification of

exemplary structures and specific and alternative means and structures of some embodiments of systems capable of implementing the method claimed in claim 17 coordinate with the relevant steps of claim 19. *See generally supra* & Specification ¶¶ [00032] – [00049]. Additionally, the Specification discloses that software means installed and running on central computer 12 are programmed to activate a visual and/or audible alarm (i.e., a flashing icon and/or beep) as well as to display inventory monitoring information on a trend graph for easy viewing. Specification ¶ [00032].

Independent claim 20 is directed to a method for a transportation carrier to maintain sufficient quantities of dry bulk materials at a remote manufacturing site. The method includes the steps of generating a first signal representative of an existing dry bulk material quantity at a remote site using one of an ultrasonic and a strain gauge detector to generate the first signal; transmitting a second signal corresponding to the first signal, from the remote site to at least one of a local computer and a central computer at predetermined time intervals; determining the existing dry bulk material quantity and projected material usage rate for the existing dry bulk material quantity based on the transmitted signals; automatically ordering additional dry bulk materials from a preselected vendor by the at least one of a local computer and a central computer based on the existing material quantity and the projected material usage rate; automatically directing a transport vehicle to deliver the additional dry bulk material from the preselected vendor to the manufacturing site; and transporting the additional dry bulk material from the preselected vendor to the manufacturing site, whereby additional dry bulk material is supplied to the manufacturing site before the existing dry bulk material is depleted.

With reference to Figures 1-8, the Specification discloses certain exemplary structures in some embodiments of systems capable of implementing the claimed method. For example, in some embodiments, a level detector 20 is capable of generating the first signal representative of an existing dry bulk material quantity and transmitting the first signal to a remote telemetry unit (RTU) 16. *See* Specification ¶ [00032]. Level detector 20 may be an ultrasonic level detector 24 and/or a strain gauge level detector 26. *Id.* ¶¶ [00035], [00042] – [00043]. Strain gauge 26 can be placed on legs 27 of storage vessel 15 to measure the change in length of legs 27 caused by the change in quantity of material in storage vessel 15. *Id.* A preferred ultrasonic level indicator is disclosed and identified by trade name and manufacturer. *Id.* Level detector 20 is capable of transmitting the first signal to a remote telemetry unit (RTU) 16. *See* Specification ¶ [00032]. RTU 16 is capable of transmitting the second signal corresponding to the first signal from a remote site to at least one of a local computer, such as a laptop computer or a standard personal computer, and a central computer 12 at predetermined time intervals. *Id.* ¶¶ [00032] – [00033]. Software means installed and running on the local computer of central computer 12 are capable of receiving and storing data transmitted from RTU 16 and are capable of determining the existing dry bulk material quantity and projected material usage rate for the existing dry bulk material quantity. *Id.* Specific and alternative means and structures embodying the aforementioned features of the claimed method are disclosed in the Specification. *Id.* ¶¶ [00033] – [00040], [00042] – [00049]. When raw material levels fall below a predetermined level, software means on the local computer or central computer 12 are capable of automatically ordering additional dry bulk materials from a preselected vendor based on the determined existing material quantity and projected material usage rate and automatically directing a transport vehicle to deliver the additional dry bulk material from the preselected vendor to the

manufacturing site. *Id.* ¶¶ [00040] – [00041]. The transportation carrier then transports the additional dry bulk material from the vendor to the manufacturing site, and the dry bulk material is supplied before the existing dry bulk material is depleted. *Id.*

VI. Grounds of Rejection To Be Reviewed on Appeal

1. Whether claims 17 and 20 are subject to rejection under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,983,198 to Mowery et al. (hereinafter “Mowery” or “Mowery reference”), in view of U.S. Patent 4,615,351 to Schliefer et al. (hereinafter “Schliefer” or “Schliefer reference”).

2. Whether claim 19 is subject to rejection under 35 U.S.C. § 103(a) as being unpatentable over Mowery, in view of Schliefer, in further view of U.S. Statutory Invention Registration No. H1743 to Graves et al. (hereinafter “Graves” or “Graves reference”).

VII. Argument

A. Claims 17 and 20 are patentable over the Examiner's proposed combination of Mowery and Schliefer because Applicant conceived of the invention claimed in claims 17 and 20 prior to the effective date of Mowery and, therefore, Mowery is invalid as a prior art reference.

The Examiner has rejected claims 17 and 20 as unpatentable under 35 U.S.C. § 103(a) over Mowery in view of Schliefer. Specifically, the Examiner has taken the position that Applicant was not in possession of the claimed invention prior to the effective date of Mowery, which was filed on April 23, 1996. (Official Action of Nov. 3, 2005, ¶ 1, at 2.) In response to this rejection and pursuant to 37 C.F.R. § 1.131, Applicant submitted an Affidavit of David B. Wallace, including attached exhibits A-L and dated August 18, 2005 (hereinafter "Affidavit"), that provides ample factual evidence of Applicant's conception of his invention prior to the effective date of the Mowery reference, and of his diligence in moving from conception to a reduction to practice. (See Preliminary Amendment of August 18, 2005, at 8 (noting submission of Affidavit).) The Affidavit is attached hereto as part of the Evidence Appendix, *infra*. In view of this valid and conclusive proof that Applicant conceived of the entire invention claimed in claims 17 and 20 prior to the effective date of Mowery, Mowery is invalid as a prior art reference, and the Examiner's rejection of claims 17 and 20 should be reversed.¹

¹ Although the Examiner had previously questioned whether the instant continuation-in-part application could claim priority from the parent application, now issued as U.S. Patent No. 6,366,829, and, therefore, whether Mowery might be considered a § 102(b) type of reference, in response to Applicant's Amendment After Final Rejection, filed May 19, 2006, the Examiner has reconsidered and withdrawn this potential basis for rejection, and, consequently, this issue is not a subject of the instant appeal. (See Official Action of June 2, 2006, at 2 ("That is, since priority

A rejection based on a combination of references under 35 U.S.C. § 103 may be overcome by showing invention of the claimed subject matter prior to the effective date of any of the references. *See* MPEP § 715.02. Priority of the claimed invention may be established with a showing of facts sufficient to demonstrate, *inter alia*, conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent actual reduction to practice. MPEP § 715.07. To establish conception of the invention, the applicant must show a “definite and permanent idea of the complete and operative invention.” *Gunter v. Stream*, 573 F.2d 77, 80 (C.C.P.A. 1978) (quoting *Mergenthaler v. Scudder*, 1897 C.D. 724, 741 (1897)). Such a showing is typically made by an affidavit or declaration of the inventors of the claimed subject matter, submitted pursuant to 37 C.F.R. § 1.131. *See* MPEP § 715.04. “The essential thing to be shown under 37 C.F.R. § 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact.” MPEP § 715.07. In addition to the testamentary evidence of the body of the Affidavit, allegations of fact may be further supported by documents and things submitted as exhibits to the Affidavit. *Id.* When reviewing an affidavit, the Examiner must consider all of the evidence presented in its entirety, including the affidavit and all accompanying exhibits, records, and notes. *Id.* An accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself. *Ex parte Ovshinsky*, 10 U.S.P.Q.2d 1075 (Bd. Pat. App. & Inter. 1989). Importantly, to the extent the exhibits do not establish actual dates of conception or a reduction

may now be granted to U.S. Patent No. 6,366,829, having an effective filing date of 10/6/1998, Mowery et al. is no longer viewed to be a 102(b) type of reference and therefore may be overcome by appropriate showing under 37 CFR 1.131.”.)

to practice, “the matter of dates can be taken care of in the body of the oath or declaration”; only the actual dates of acts relied on to establish diligence in reduction to practice must be provided. MPEP § 715.07.

In accordance with these principles, the Affidavit submitted by Applicant here is sufficient to “swear back of” the Mowery reference with testamentary and documentary evidence establishing that Applicant was in possession of the whole claimed invention prior to the effective date of Mowery. In the Affidavit, Applicant attests that he invented the claimed subject matter, with specific reference to each limitation, prior to April 22, 1996. (Aff. of David B. Wallace ¶¶ 2-4.) Applicant explains that after conceiving of the invention and due to a lack of engineering skill necessary to pursue the invention, he sought the advice and assistance of companies and individuals specializing in the design and manufacture of inventory level systems to memorialize his conception of the invention and his diligent efforts to reduce the conception to practice. (*Id.* ¶¶ 8-9.) The Affidavit explains that after conceiving of the invention, Applicant began the trial and error process of reducing his completed conception of the invention to practice no later than **February 9, 1996**, when he first contacted Fred Coffey of Apptech Engineered Systems to discuss how his conception of the invention could be realized. (*Id.* ¶ 11, Ex. A.) Indeed, Exhibit A provides a copy of a note from Mr. Coffey to Applicant dated February 9, 1996 providing a quote for a plumb bob unit and a confirmation of Mr. Coffey’s follow up to obtain data flow from silo-based units back to a central computer in accordance with the conception of the invention as verbally expressed previously in a telephone conversation between Coffey and Applicant. (*Id.* at Ex. A.) Beyond this initial contact, the Affidavit further details, with citation to supporting documentation provided as exhibits thereto, Applicant’s

diligent reduction to practice of his invention, from that first contact no later than February 9, 1996 through September 1998, when the invention was implemented and fully functioned according to Applicant's expectations and in conformance with anticipated results at a Nucor facility in Darlington, South Carolina, and November 1998, when the invention was implemented and fully functioned according to Applicant's expectations and in conformance with anticipated results at a Pennsylvania Steel Technologies facility in Steelton, Pennsylvania. (*Id.* ¶¶ 9-60.) Each paragraph of this sworn statement provides details regarding persons and companies Applicant contacted regarding his invention, the dates on which he communicated with these persons and companies, the substance of these communications, the prototypical designs and implementations of his conception of the invention, the problems encountered with fully reducing the conception to practice, and the ultimate success of realizing the invention in a workable embodiment. (*Id.*) Taken as a whole, the Affidavit clearly and sufficiently establishes that Applicant had a definite and permanent idea of the complete and operative invention, i.e., conception of the invention prior to the effective date of Mowery coupled with diligent, actual reduction to practice of the invention in September and November of 1998. *See Gunter*, 573 F.2d at 80; MPEP § 715.07.

Contrary to the clear import and effect of the Affidavit, the Examiner has taken the position that the Affidavit does not establish that Applicant had conceived of the specific limitations of "automatically ordering materials" and "automatically directing a transport vehicle to deliver the materials." (Official Action of Nov. 3, 2005, ¶ 1, at 2.) The Examiner has alleged that the first and only mention of these limitations is found in the engineering report dated April

13, 1998, attached to the Affidavit as Exhibit L. This position is, however, demonstrably incorrect.

As noted above, the Affidavit includes proof that Applicant had possession of his fully conceived invention as early as **February 9, 1996**, as evidenced by the note from Fred Coffey included at Exhibit A providing a quote for a plumb bob unit to be used in a system embodying the invention and making plain reference to “the PLC unit to be located at each silo farm, and the method to access the inventory data from your central computer.” (Aff. of David B. Wallace at Ex. A.) The reference to features of some embodiments of Applicant’s invention (e.g., a plumb bob measuring device, more than one silo farm, access to inventory data, a central computer, etc.) indicates that Applicant had a “definite and permanent idea of the complete and operative invention,” *See Gunter*, 573 F.2d at 80, and that he communicated this conception to Fred Coffey prior to the writing of this note. (*See, e.g., id.* ¶¶ 10-11.)

Another note from Fred Coffey, included at Exhibit B, provides further proof that Applicant had conceived of the invention prior to the effective date of the Mowery reference, including express reference to the automated features of the invention. (*Id.* at Ex. B.) This note, dated **February 12, 1996**, references the use “black boxes,” the very purpose of which is to automate processes. (*Id.*) The note explains that such black boxes (i) “would have the ability to take readings on a timed basis,” i.e., without human direction or intervention, (ii) “should communicate with most PC’s,” and (iii) would be custom-built to specifications by “our panel builder.” (*Id.*) The clear meaning of these notes written by Mr. Coffey is that Applicant had conceived of his entire invention, including the automated processes, prior to early February 1996. (*See, e.g., id.* ¶¶ 12-13.)

Other exhibits included in the Affidavit support the fact that Applicant had conceived of the invention prior to the effective date of the Mowery reference and was working diligently toward a reduction to practice from the time of conception until after the effective date of the Mowery reference. For example, Exhibit C includes a letter from Steve Adams regarding reducing Applicant's invention to practice. (*Id.* at Ex. C.) In this communication, dated **February 20, 1996**, Mr. Adams references features of some embodiments of the invention (e.g., small systems "linked as a network to your home office," monitoring storage vessels "from your location," etc.) and provides a schematic of an application of the invention with the notation that the output is to be "continuous," indicating an automated process. (*Id.*; *see also id.* ¶¶ 14-15.) Exhibit D provides a follow-up letter from Steve Adams referencing a prior meeting and discussion of Applicant's "unique application," which "utilizes a computer modem for separate locations." (*Id.* at Ex. D; *see also id.* ¶¶ 16-17.) Exhibit E of the Affidavit provides a letter dated **April 8, 1996** making reference to a meeting on **March 28, 1996** wherein Peter R. Wells, a technical representative working at the direction of Fred Coffey, conducted a sales presentation at J.P. Donmoyer, Applicant's employer. (*Id.* at Ex. E; *see also id.* ¶¶ 18-19.) The letter indicates that at that March 28 meeting, Applicant inquired about the operation of "black boxes" to call the central computer "automatically." (*Id.* (emphasis added).) The letter also mentions that communications by the black boxes "could be made at night," suggesting that an automated process could occur during non-business hours, when employees are not available. (*Id.*) The clear implication of this letter is that Applicant had fully conceived of the invention prior to March 28 meeting, when he asked specific questions about implementing automated steps of his invention that Mr. Wells subsequently investigated. Lastly, Exhibit F includes a sworn statement by Michael Karpa, an employee of Magyar Associates – the company that eventually installed a

system based on the conceptions of Applicant's invention – in which Mr. Karpa swears to having been approached by Applicant on May 30, 1996 to discuss implementation of Applicant's invention. (*Id.* at Ex. F, ¶ 2.) Mr. Karpa states that during the week of June 3, 1996, he made a sales call at J.P. Donmoyer and during this meeting Mr. Karpa presented various equipment that could be used in implementing one embodiment of invention. (*Id.* ¶ 3.) Mr. Karpa specifically states that he presented “various types of leveling systems as well as options to retrieve data from a site and transmit that data back to a central computer where the data could be displayed for the logistical purpose of consistent product replenishment in accordance with the conception of [Applicant's] invention.” (*Id.* (emphasis added).) This statement clearly indicates that Applicant was in full possession of a conception of his invention, including “automatically ordering materials and automatically directing a transport vehicle to deliver the materials,” and was diligently working toward a reduction to practice of the invention prior to June 3, 1996.

In short, the Affidavit provides ample testamentary and documentary evidence establishing that Applicant had conceived of the entire invention, including the “automated” limitations, prior to the April 23, 1996 effective date of the Mowery reference. Although the exhibits of the Affidavit need not support all claimed limitations, *Ex parte Ovshinsky*, 10 U.S.P.Q.2d 1075, and the precise dates of conception and reduction to practice need not be established in the exhibits, MPEP § 715.07, in fact, as discussed above, many of the exhibits do support these limitations. The exhibits also support Applicant's sworn statement, which itself can and does serve as satisfactory evidence of the fact of priority of invention with respect to Mowery. MPEP § 715.07.

Moreover, the engineering report at Exhibit L of the Affidavit, alleged by the Examiner to include the first and only mention of the “automated” limitations, also supports Applicant’s statement surrounding the conception of his invention and its priority. (Aff. of David B. Wallace at Ex. L.) As the Examiner has admitted, the report discloses the limitations “automatically ordering materials” and “automatically directing a transport vehicle to deliver the materials.” (Official Action of Nov. 3, 2005, ¶ 1, at 2.) What the Examiner does not appreciate, however, is that the engineering report describes features of at least one embodiment of Applicant’s invention as implemented in an “EXISTING SYSTEM” that had already been built. (Aff. of David B. Wallace at Ex. L at 1 (providing heading “EXISTING SYSTEM”).) The report clearly states that: “J.P. Donmoyer, Inc. uses a Bulk Inventory Network System (BINS) to monitor customer inventories and order delivery of materials,” (*id.* at 1 (emphasis added)); “This equipment was supplied by Magyar & Associates, and installed by TriStar, Inc.,” (*id.* at 1 (emphasis added)); and “A remote telemetry unit is currently installed at the Bethlehem Steel Plant in Steelton,” (*id.* at 2 (emphasis added)). Contrary to the Examiner’s position, the report clearly describes a system that had already been implemented prior to April 13, 1998.

Further, contrary to the Examiner’s allegations, Applicant does not assert that the engineering report at Exhibit L on its face and in and of itself proves Applicant’s possession of the invention more than two years prior to the date of the report. (See Official Action of June 2, 2006 at 3.) Rather, Applicant asserts that the report, together with the other evidence submitted in and with the Affidavit, support Applicant’s account of the facts surrounding the priority of the invention with respect to Mowery. As noted above, when reviewing an affidavit, the Examiner must consider all of the evidence presented in its entirety, including the affidavit and all

accompanying exhibits, records, and notes. MPEP § 715.07. Additionally, the exhibits of the Affidavit need not support all claimed limitations as long as the declaration itself supports the limitations. *Ex parte Ovshinsky, supra*. Applicant's position is that the sum of the evidence presented in the Affidavit, including the sworn statement and exhibits, supports the claimed priority of invention and, therefore, Mowery is not a valid prior art reference.

The above-identified exhibits and the other exhibits attached to the Affidavit, including correspondence between Applicant and various companies and individuals he consulted to reduce his invention to practice, prove that Applicant was in possession of his invention prior to the effective date of the Mowery reference and that Applicant worked diligently to reduce his conception to actual practice by September 1998.

For at least these reasons, Examiner's position that Applicant's actual earliest conception of the invention related to automatically ordering materials and automatically directing a transport vehicle to deliver the materials did not occur until April 13, 1998, is, in view of Applicant's August 18, 2005 Affidavit, unsupported and invalid. The Examiner failed to consider all of the evidence presented in its entirety, including the affidavit and all accompanying exhibits, records, and notes. MPEP § 715.07. The Affidavit clearly establishes the priority of Applicant's invention with respect to the Mowery reference. Accordingly, Mowery should be removed as a valid prior art reference, and, the Examiner's rejection of claims 17 and 20 should be reversed.

B. Claim 19 is patentable over the Examiner's proposed combination of Mowery, Schliefer, and Graves because Applicant conceived of the invention claimed in claim 19 prior to the effective date of Mowery and, therefore, Mowery is invalid as a prior art reference.

The Examiner has rejected claims 19 as unpatentable under 35 U.S.C. § 103(a) over Mowery in view of Schliefer in further view of Graves. Specifically, the Examiner has applied the rejection of claim 17 over the combination of Mowery and Schliefer, with the further teaching of Graves of a control room alarm box for use in issuing visual or audible alarms when levels in storage fall below a predetermined level. (*See* Official Action of Apr. 27, 2005, ¶ 6, at 4-5; Official Action of March 21, 2006, ¶ 5, at 7.)

As with the rejection of claims 17 and 20, in response to the rejection of claim 19 and pursuant to 37 C.F.R. § 1.131, Applicant submitted the August 18, 2005 Affidavit of David B. Wallace, including attached exhibits A-L. Applicant repeats and realleges, as if fully set forth in this Section VII.B. specifically appealing the rejection of claim 19, the arguments presented above regarding the Affidavit and the established priority of Applicant's invention with respect to the Mowery reference. Because the Affidavit proves that Applicant conceived of the invention claimed in claim 19, as well as claims 17 and 20, prior to the effective date of the Mowery reference, Mowery is invalid as a prior art reference, and the Examiner's rejection of claim 19 should be reversed.

VIII. Conclusion

For the reasons stated above, the Examiner's rejection of claims 17, 19, and 20 is erroneous. Applicant submits that this application is in condition for allowance and respectfully requests reversal of the rejection of claims 17, 19, and 20.

Respectfully submitted,

Dated:10/11/2006

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Claims Appendix

1. – 16. (Canceled)

17. (Previously Presented) A method for a transportation carrier to maintain sufficient quantities of dry bulk materials at a remote manufacturing site comprising:

generating a first signal representative of an existing dry bulk material quantity at a remote site;

transmitting a second signal corresponding to said first signal, from said remote site to at least one of a local computer and a central computer at predetermined time intervals;

determining said existing dry bulk material quantity and projected material usage rate for said existing dry bulk material quantity based on said transmitted signals;

automatically ordering additional dry bulk materials from a preselected vendor by said at least one of a local computer and a central computer based on said existing material quantity and said projected material usage rate;

automatically directing a transport vehicle to deliver said additional dry bulk material from said preselected vendor to said manufacturing site; and

transporting said additional dry bulk material from said preselected vendor to said manufacturing site,

whereby additional dry bulk material is supplied to said manufacturing site before said existing dry bulk material is depleted.

18. (Canceled)

19. (Previously Presented) A method for a transportation carrier to maintain sufficient quantities of dry bulk materials at a remote manufacturing site comprising:

generating a first signal representative of an existing dry bulk material quantity at a remote site;

transmitting a second signal corresponding to said first signal, from said remote site to at least one of a local computer and a central computer at predetermined time intervals;

determining said existing dry bulk material quantity and projected material usage rate for said existing dry bulk material quantity based on said transmitted signals;

automatically ordering additional dry bulk materials from a preselected vendor by said at least one of a local computer and a central computer based on said existing material quantity and said projected material usage rate;

automatically directing a transport vehicle to deliver said additional dry bulk material from said preselected vendor to said manufacturing site; and

transporting said additional dry bulk material from said preselected vendor to said manufacturing site,

whereby additional dry bulk material is supplied to said manufacturing site before said existing dry bulk material is depleted; and

producing at least one of an audible and a visual alarm, via said central computer, if said material level falls below a predetermined level.

20. (Previously Presented) A method for a transportation carrier to maintain sufficient quantities of dry bulk materials at a remote manufacturing site comprising:

generating a first signal representative of an existing dry bulk material quantity at a remote site using one of an ultrasonic and a strain gauge detector to generate said first signal;

transmitting a second signal corresponding to said first signal, from said remote site to at least one of a local computer and a central computer at predetermined time intervals;

determining said existing dry bulk material quantity and projected material usage rate for said existing dry bulk material quantity based on said transmitted signals;

automatically ordering additional dry bulk materials from a preselected vendor by said at least one of a local computer and a central computer based on said existing material quantity and said projected material usage rate;

automatically directing a transport vehicle to deliver said additional dry bulk material from said preselected vendor to said manufacturing site; and

transporting said additional dry bulk material from said preselected vendor to said manufacturing site,

whereby additional dry bulk material is supplied to said manufacturing site before said existing dry bulk material is depleted.

21. (Canceled)

Evidence Appendix

A true and correct copy of the August 8, 2005 Affidavit of David B. Wallace, including Exhibits A-L and originally submitted under 37 C.F.R. § 1.131 with a Preliminary Amendment to a Continuing Examination Application dated August 18, 2005, is provided. The entry into the record of this § 1.131 Affidavit is acknowledged in the Official Action dated November 3, 2005 at paragraph 1 on page 2.

Related Proceedings Appendix

NONE